

STATE OF MICHIGAN
COURT OF APPEALS

CELENA M. BALL, f/k/a CELENA M.
WELTER,

UNPUBLISHED
August 10, 2004

Plaintiff-Appellant,

v

JOHN W. WELTER, JR.,

No. 253438
Hillsdale Circuit Court
LC No. 00-000195-DM

Defendant-Appellee.

Before: Judges Whitbeck, CJ, and Owens and Schuette, JJ

PER CURIAM.

In this custody dispute, plaintiff, Celena M. Ball, appeals by right from the order granting a change in physical custody of the parties' two minor children from plaintiff to defendant. We remand this case for a reevaluation of the custody issue.

Plaintiff and defendant were married March 20, 1992 and had two children. On February 24, 2000, plaintiff filed for divorce, which resulted in a judgment of divorce filed February 12, 2001. Within the judgment of divorce, the trial court awarded joint legal custody to both parties, physical custody of the children during the school year to plaintiff, and physical custody during the summer to defendant. Defendant petitioned the trial court for a change in custody in January 2003, which was denied that same month for a failure to show either a change in circumstances or proper cause. Defendant again petitioned the trial court for a change in custody in February 2003; however, the trial court did not definitively decide the custody issue at either a March 2003 hearing on defendant's petition, or a later hearing in April concerning parenting time. During a May 6, 2003 hearing regarding parenting time, the trial court issued an interim order changing custody from plaintiff to defendant after learning that plaintiff did not attend a meeting regarding one child's schoolwork and failed to tell defendant that she would not be attending. Seven months later, on December 19, 2003, the trial court held an evidentiary hearing regarding the change in custody and, on January 4, 2004, issued an order granting defendant custody.

Plaintiff first asserts that the trial court abused its discretion in admitting evidence of events occurring before its January 2003 order denying defendant's petition for a change in custody. We disagree. Generally, the decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Campbell v Sullins*, 257 Mich App 179, 196; 667 NW2d 887 (2003). However, because plaintiff failed to object to the admission of this evidence at trial, this issue is unpreserved. This Court

reviews unpreserved evidentiary issues to determine whether a plain error occurred that affected a party's substantial rights. *Hilgendorf v St John Hosp & Medical Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

Plaintiff cites *Vodvarka v Grasmeyer*, 259 Mich App 499, 514; 675 NW2d 847 (2003), for support that the trial court was "limited to considering evidence arising between the entry of the order and the filing of the petition for custody in determining whether a change in circumstances" existed. However, plaintiff fails to either identify the testimony to which she objects or apply this case law to the facts of this case. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for [her] claims, or unravel and elaborate for [plaintiff her] arguments, and then search for authority either to sustain or reject [her] position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). A party also may not give issues cursory treatment with little or no citation to supporting authority. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Plaintiff's "failure to properly address the merits of [her] assertion of error constitutes abandonment of the issue." *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003), citing *Yee v Shiawassee Co Bd of Comm's*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Plaintiff next asserts that the trial court erred in reviewing the existing order of custody without first finding a change in circumstances or proper cause. We agree. All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 876-877 (Brickley, J.), 900 (Griffin, J.); 526 NW2d 889 (1994); *Harvey v Harvey*, 257 Mich App 278, 283; 668 NW2d 187 (2003), aff'd 470 Mich 186 (2004). The abuse of discretion standard applies to the trial court's discretionary rulings, and to whom custody is granted is a discretionary ruling. *Vodvarka, supra* at 507-508. An abuse of discretion occurs when the result is so grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or the exercise of passion or bias. *Fletcher, supra* at 879-880 (Brickley, J.), 900 (Griffin, J.). Questions of law are reviewed for clear legal error. A trial court commits legal error when it incorrectly chooses, interprets or applies the law. *Id.*, 881 (Brickley, J.), 900 (Griffin, J.); *Vodvarka, supra* at 508.

A trial court can modify a custody order only where the moving party first establishes by a preponderance of the evidence that "proper cause" or a "change in circumstances" supports a finding that a change in custody is in the child's best interest. MCL 722.27(1)(c); *Vodvarka, supra* at 508-509. The party seeking change must establish proper cause or a change in circumstances before the existence of an established custodial environment and the best interest factors may be considered. *Id.* If this initial burden is not met, "the trial court is not authorized by statute to revisit an otherwise valid prior custody decision and engage in a reconsideration of the statutory best interest factors." *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994); MCL 722.27(1)(c).

As noted above, during a May 6, 2003 hearing regarding parenting time, the trial court changed custody in apparent frustration over plaintiff's ongoing lack of cooperation after learning that plaintiff did not attend a school meeting and did not tell defendant that she would

not be attending. This Court has noted that issues regarding parenting time and even the contempt of one of the parties are not sufficient to establish a change in circumstances or proper cause requiring a review of an existing custody order. *Vodvarka, supra* at 509-510, citing *Adams v Adams*, 100 Mich App 1, 13; 298 NW2d 871 (1980). Both the May 6 transcript and the resulting interim order changing custody lack any finding regarding a change in circumstances or proper cause. Without such a finding, the trial court was without authority to review the existing custody order and committed legal error by doing so. *Fletcher, supra* at 881 (Brickley, J.), 900 (Griffin, J.); *Rossow, supra* at 458; MCL 722.27(1)(c). While this error initially relates back to the May 6 interim order, we note that the December 2003 evidentiary hearing and resulting January 2004 order from which plaintiff appeals also lack any finding of a change in circumstances or proper cause to review custody; therefore, this legal error also extends to the order from which plaintiff appeals.

If a trial court improperly adjudicates a child custody dispute, and the impropriety is not harmless, the appropriate remedy is to remand for reevaluation. *Fletcher, supra* at 889 (Brickley, J.), 900 (Griffin, J.). An error that results in a change in custody is not harmless. *Harvey, supra* at 292. Although, in this case, a remand for reevaluation may again result in defendant retaining custody, Michigan courts have recognized that one legislative goal behind the Child Custody Act is to prevent sudden changes in custody, which can be disruptive rather than beneficial to children. *Vodvarka, supra* at 509 (internal citations omitted). Such a change was present in this case. Therefore, we remand this case for a reevaluation of the custody issue in accordance with the statute. On remand, the trial court shall follow the procedure of the statute and determine whether there was sufficient evidence to warrant a finding of a change in circumstances or proper cause shown. If the court finds a change in circumstances or proper cause, it should determine whether a custodial environment as been established before considering the best interest factors regarding each child. When determining the best interests of the children, it should consider up-to-date information arising since the original custody order. *Fletcher, supra* at 889 (Brickley, J.), 900 (Griffin, J.). The January 4, 2004 order shall remain in effect pending the trial court's reevaluation in order to minimize disruption in the children's lives. The primary purpose of the Child Custody Act is to protect the children's best interest, and the trial court is in the best position to make this determination. *Id.* at 889-890 (Brickley, J.), 900 (Griffin, J.).

We remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette